

REMARKS

Entry of this amendment and reconsideration of the subject application in view thereof are respectfully requested.

I. Status of the Claims

Claims 1-18 are pending in this application. Claims 10, 12 and 13 have been withdrawn. Claim 18 has been amended to clarify the invention. No new matter has been added.

II. Restriction/Election Requirement

In the Office Action, the Examiner has imposed a requirement to elect a specific viral antigen from claim 18 (as set forth on pages 2-3 of the Office Action) for further examination of the above application.

Applicant hereby provisionally elects with traverse to further prosecute Hepatitis B antigen as species.

In the Office Action, the Examiner averred that the species in claim 18 “do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the recite [sic] viral antigens originate from distinct viruses with different structures (both internally and externally) and therefore lack the same special technical feature.” However, the Examiner has not met his burden to establish the necessity for a restriction requirement.

Claim 18 indirectly depends from previously elected independent claim 1 and contains all of the features of claim 1 as well as intervening dependant claims 2 and 16. The Examiner has not established that claim 1 reads on prior art or that claim 1 cannot satisfy novelty or nonobviousness requirements. This claim recites a number of special technical features (steps (a) – (h)) that define a contribution which, when considered as a whole, make over the prior art. These features are common to all of the different proteins recited in claim 18. Therefore, the restriction based on lack of unity of invention under PCT 13.2 cannot arise because claim 18 contains all of the features of claim 1. The Examiner has not referred to a single piece of prior art or any other evidence to show that the special technical features of the process for the preparation and purification of proteins using the HIMAX technology has been taught by the prior art. The Examiner merely provides a statement of conclusion

that the species in claim 18 do not relate to a single general inventive concept. An unsupported allegation by the Examiner is not believed to be sufficient to support the required restriction.

Furthermore, the Examiner must explain why there would be a serious burden on the Examiner if the species election is not required. The Examiner must show that there would be serious search burden as evidenced by separate classification, status or field of search. All of the species in claim 18 are sufficiently related – they are all antigenic proteins. Thus, Applicant submits that all of the claims and the claimed species can be searched and examined without any serious burden to the Examiner.

It is further submitted that in view of the fees charged for filing of divisional patent applications, and prosecution and maintaining the resulting patents place an undue burden on the Applicant, which justifies that any restriction or election requirement be clearly supported and made according to the patent examining procedure. Applicant respectfully submits that the present restriction/election requirement is not in accordance with the patent examining procedure including 37 C.F.R. §§ 1.475 and 1.499.

Based upon the above remarks, Applicant respectfully requests reconsideration of this restriction requirement and early allowance of the pending claims. Should the Examiner feel that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the undersigned attorney.

The Commissioner is hereby authorized to charge any fees, which may be required by this paper, to Deposit Account No. 18-0586.

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Respectfully submitted,

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